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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,816

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Florence Henry

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EXAMINER

MI, QIUWEN

ART UNIT

PAPER NUMBER

1655

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,816	Applicant(s) HENRY ET AL.	
	Examiner QIUWEN MI	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-17 and 19-33 is/are pending in the application.
- 4a) Of the above claim(s) 22-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-17, 19-21 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendment in the reply filed on 8/19/08 is acknowledged, with the cancellation of Claims 1-11, and 18; and the additional newly added Claim 32. Claims 12-17, and 19-33 are pending. Claims 22-31 are withdrawn. **Claims 12-17, 19-21, and 32 are examined on the merits.**

Any rejection that is not reiterated is hereby withdrawn.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-17, 19, 21, and 32 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Charrouf et al (Triterpenes and sterols isolated from the pulp of *Argania spinosa* (L.), Sapotaceae, *Plantes Medicinales et Phytotherapie* 25 (203), 112-117, 1991) (see full translation attached), in view of Fabre et al (FR 2724663A1), and further in view of Charrouf et al (EP 1213025 A1).

This is a new rejection necessitated by the Applicant's amendment filed on 8/19/08.

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Charrouf et al teach that tripterpenic alcohols and sterols were isolated from the unsaponifiable fraction of the pulp's lipidic extract of *Argania spinosa*, and these compounds are lupeol, beta and alpha-amyrines, etc (see page 1, Abstract). Charrouf et al also that Argan tree (the same as *Argania spinosa*) produces a fruit called "Argan", which is formed of a fleshy part or pulp and a very hard core containing an oleaginous seed. Argan oil extracted using traditional methods is used in traditional medicine for diseases of the skin, against chickenpox and acne, and against aging of the skin (page 1, last paragraph bridging page 2).

Charrouf et al do not teach a method of treating skin damage by UV-A and/or UV-B radiation, or the claimed amount of the extract or auxiliaries in the composition.

Fabre et al teach the process for enriching argan oil in unsaponifiable component and that the enriched argan oil can be used in cosmetic compositions in an amount of 0.5-3 wt.% to prevent skin from aging and drying out (see Abstract, and the rejection is based on the Abstract).

Charrouf et al (EP 1213025 A1) teach cosmetic and/or dermatological preparations (A) contain extracts (I) of the leaves of the plant *Argania spinosa* (a type of olive tree mainly found in Morocco) as care agents for the skin and hair. Charrouf et al (EP 1213025 A1) also teach that I) are skin and/or hair care agents which have sunscreen action (especially against UV-a and/or UV-B radiation), show antiinflammatory, antimicrobial and antioxidant activity, counteract aging of the skin, inhibit proteases (specifically collagenase and/or elastase) and have pigmenting action (all claimed). Typically (I) are effective against sunburn, inflammatory skin disorders (e.g. due to UV radiation, skin contamination, bacterial or hormonal effects, including acne), bacterial infections of the skin (e.g. by *Staphylococcus*, *Streptococcus*, *Streptomyces* or *Propionibacterium*) or skin aging symptoms such as lines and wrinkles; or as melanogenesis

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stimulating artificial tanning agents. (I) are also useful for treating sensitive skin or skin affected by allergies (see Abstract, the rejection is based on the Abstract).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the extract of the plant *Argania spinosa* to treat skin damage by UV-A and/or UV-B radiation since Charrouf et al (EP 1213025 A1) teach that the extract of the plant *Argania spinosa* has sunscreen action especially against UV-a and/or UV-B radiation.

It would also have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use 0.5-3 wt% argan oil in a cosmetic composition (wherein the rest of the components in the cosmetic composition are obviously dermatopharmaceutical auxiliary and/or additive) as taught by Fabre et al. Since Fabre et al teach that argan oil in cosmetic compositions in an amount of 0.5-3 wt% prevents skin from aging and drying out, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the auxiliaries in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan, which is dependent on viscosity of the final cosmetic product that is needed.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

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Claims 12-17, 19-21, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charrouf et al, Fabre et al, and Charrouf et al (EP 1213025 A1) as applied to claims 12-17, 19, 21, and 32 above, and further in view of Martin et al (US 6,616,936).

This is a new rejection necessitated by the Applicant's amendment filed on 8/19/08.

The teachings of Charrouf et al, Fabre et al, and Charrouf et al (EP 1213025 A1) are set forth above and applied as before.

The combination of Charrouf et al, Fabre et al, and Charrouf et al (EP 1213025 A1) do not specifically teach a surfactant in the composition.

Martin et al teach a composition comprising an oil-in-water emulsion (thus contains surfactant) (see Title). Martin et al also suggest that the composition can also comprise additives that are routinely introduced into cosmetic compositions, for example, argan oil (col 4, lines 45-55).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the oil-in-water (water is a dermatopharmaceutical auxiliary) emulsion (with surfactants) of Martin et al in the composition made obvious from the combined teachings of Charrouf et al and Fabre et al since cream or lotions with surfactant are conventional cosmetics that is well known in the art. Since all of the references report the utilization of argan oil on skin, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the auxiliaries in the composition, the result-effective

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adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan, which is dependent on viscosity of the final cosmetic product that is needed.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QM

/Michael V. Meller/

Primary Examiner, Art Unit 1655